

UNITED STATES SENTENCING COMMISSION
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February 27, 1992

MEMORANDUM

TO: Chairman Wilkins
Commissioners
Senior Staff
Mike Courlander

FROM: Phyllis J. Newton *pjn*
Staff Director

SUBJECT: Comment from Federal Probation Officer

At the Commission's recent training program in San Diego, Deputy Chief Probation Officer Jerry Denzlinger (an officer who has been an extremely valuable friend and aide to the Commission) asked me to deliver the attached recommendation from one of his officers. He has very high praise for this officer and feels confident that the suggestion has been well researched and undergone considerable discussion among presentence report writing officers in the Southern District of Texas. Please excuse his remark at the end; he has submitted suggestions previously that I believe got lost in the shuffle (I have written what I hope will be an appeasing letter).

I attach the recommendation for your consideration during this amendment cycle.

Attachment

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
PROBATION OFFICE**

February 6, 1992

CORPUS CHRISTI DIVISION
606 N. Carancahua, Suite 1500
Corpus Christi, Texas 78476

Mr. Jerry Denzlinger, Deputy Chief
U. S. Probation Officer
P. O. Box 61207
Houston, Texas 77208-1207

RE: SINGLE ACT OF ABERRANT BEHAVIOR

Dear Jerry:

During the staff meeting here in Corpus Christi on February 4, 1992, you mentioned that there are some proposals to the Sentencing Commission regarding an increased emphasis on the defendant's social background. I am quite concerned that such arbitrary issues as a defendant's social history will become an issue at sentencing proceedings. As you are aware, sentencing proceedings already have become very adversarial and complicated concerning the guidelines. To now try and account for experiences a defendant may or may not have had in their formative, as well as adult lives, on a social basis, would be a nightmare.

As indicated in our meeting, it is felt as an alternative to trying to measure the concerns noted above, the Sentencing Commission should instead consider defining "single acts of aberrant behavior" committed by defendants, which would warrant a downward departure. The Commission notes in the last line of page 7 of the guidelines manual, that it has not yet dealt with this issue. I believe it is time to define this term. With the assistance of Sr. USPO Dick Leonard and USPO Glenn Reinecke, the following proposal for a departure issue is being presented:

5K2.17 Single Act of Aberrant Behavior

The Court may depart downward for a single act of aberrant behavior provided the following criteria exists:

The offense (1) was opportunistic in nature; (2) did not involve more than minimal planning; and (3) did not involve the use of sophisticated means to impede the discovery or extent of the crime, and

The defendant (1) was not given an adjustment under 3B1.1, 3C1.1, or 3C1.2; (2) has no prior convictions, countable or otherwise, with the exception of the type of offenses found at

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February 6, 1992

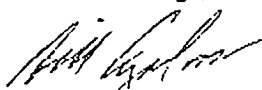
4A1.2(c)(2); (3) the court did not find the provisions of 4A1.3(c)-(e) are applicable; and (4) there is no other evidence of prior criminal conduct.

Commentary

This section is designed to provide the court with the discretion to depart downward in a case where an otherwise law-abiding citizen becomes involved in a criminal act that uncharacteristically deviates from the defendant's usual behavior. This section is not intended for those cases where relevant conduct includes additional criminal acts committed by the defendant, except where those illegal acts would have been grouped in accordance with 3D1.2(b).

Jerry, it has been my experience that the Sentencing Commission pays little heed to the other letters I have written them concerning such issues as criminal history scoring and Role in the Offense issues. If you believe that the above would be of benefit, please feel free to use and promote it. Should you feel the need to discuss it further, please don't hesitate to contact me.

Sincerely,



Bill Cazalas

Sr. U. S. Probation Officer

BC/rht